REMARKS

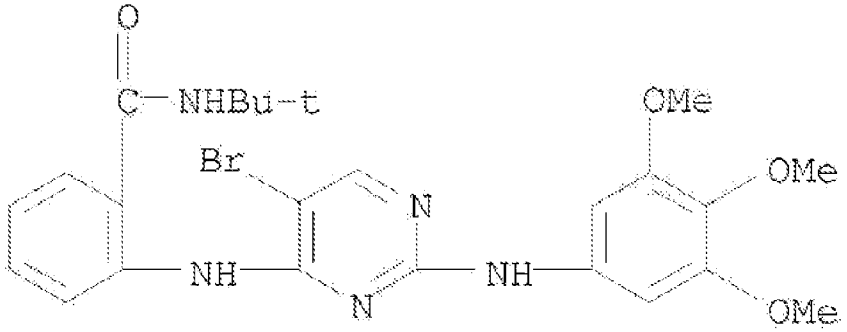
Claims 1, 2, 4, and 8 as amended are pending in the application. Claims 3, 5-7, and 9 have been cancelled without prejudice to or disclaimer of the subject matter therein. Applicants reserve the right to file one or more continuation, divisional, or continuation-in-part applications directed to any cancelled subject matter. Claim 1 has been amended. Applicants respectfully request reconsideration of the present claims in view of the foregoing amendments and in view of the remarks that follow. No new matter is added.

I. The Rejection Under 35 U.S.C. § 102(e) Should be Withdrawn

Claims 1, 2, 4, and 8 are rejected on pages 2-3 under 35 U.S.C. 102(e) as allegedly anticipated by Davis-Ward *et al.,* US 2007/0010668 ("Davis-Ward").

According to the Office Action,

> [t]he instant claims read on reference disclosed compounds that are disclosed to be useful as pharmaceutical agents and useful in the treatment of diseases, e.g., breast cancer. See the compounds of structural formula (1) in page 1, the pharmaceutical use of the compounds in page 12, and the species disclosed in Example 38 (page 36), i.e., the compound: N-(tert-butyl)-2-({5-bromo-2-[3,4,5-trimethoxy-phenyl)amino]pyrimidin-4-yl}amino)-benzamide (the structure of the compound depicted below for convenience):



(*See* Office Action at pages 2-3).

Applicants respectfully traverse the rejection. "A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Applicants respectfully submit that Davis-Ward does not recite each and every limitation of claims 1, 2, 4, and 8, as amended. Specifically, the claims, as amended, recite "R^3 is $-SO_2N(R^{10})R^{11}$." The starting material in Example 38 of Davis-Ward discloses that R^3 is -CONHBu-t. Accordingly, Davis-Ward does not disclose each and every limitation of amended claim 1 or claims dependent therefrom.

Applicants respectfully request that the rejection of claims 1, 2, 4, and 8 under 35 U.S.C. § 102(e) be withdrawn.

II. The Double Patenting Rejection

Claims 1, 2, 4 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly unpatentable over claims 1-11 and 13-22 of co-pending U.S. Application No. 10/549,250.

Claims 1, 2, 4 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly unpatentable over claims 11-23 of co-pending U.S. Application No. 11/377,716.

Without acquiescing to the propriety of the rejections, Applicants respectfully point out that this each of the rejections is a provisional obviousness-type double patenting rejection between applications, since the claims of U.S. Application No. 10//549,250 and U.S. Application No. 11/377,716 have not in fact been patented. MPEP 804(I)(B) (page 800-19) states,

> If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

Accordingly, if these are the only rejections remaining in this case, Applicants respectfully request withdrawal of the rejection in accordance with MPEP 804(I)(B).

CONCLUSION

Based on the foregoing remarks, Applicants respectfully request that the Examiner reconsider all rejections and that they be withdrawn. Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

Should the Examiner disagree, Applicants respectfully request a telephonic or in-person interview with the undersigned attorney to discuss any remaining issues and to expedite the eventual allowance of the claims.

With the exception of a three-month extension of time fee, it is believed no fees are due. The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-5071. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-5071.

Respectfully submitted,

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By: /Paul D. Strain/

Paul D. Strain
Attorney for Applicants
Registration No. 47,369

Fanelli Strain & Haag PLLC
Customer No. 91436
1455 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20004
Telephone: 202-621-1840